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In The Supreme Court of The United States

OCTOBER TERM, 1949

No. 210

AUBURN SAVINGS BANK,
EASTPORT SAVINGS BANK,
SKOWHEGAN SAVINGS BANK,
Petitioners

v.

PORTLAND RAILROAD COMPANY,
CENTRAL MAINE POWER COMPANY,
PORTLAND COACH COMPANY,
CUMBERLAND COUNTY POWER & LIGHT COMPANY,
PUBLIC UTILITIES COMMISSION OF THE STATE OF MAINE,
Respondents

BRIEF FOR PORTLAND RAILROAD COMPANY, CENTRAL MAINE POWER COMPANY AND CUMBERLAND COUNTY POWER & LIGHT COMPANY, RESPONDENTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the Maine Supreme Court below (R. 2257) is reported in *Auburn Savings Bank, et al. vs. Portland Railroad, et al.,* .... Me. ...., 65 Atl. (2d) 17 (1949). The Finding of the Sitting Justice of the Maine Court who heard the case appears in the Record. (R. 432A-R. 525A), modified in part (R. 585A-R591A).

JURISDICTION

Petitioners invoke the jurisdiction of this Court under Section 1257(3) of Title 28 of the United States Code (62 Stat. 869, 929) on the basis of Respondents having claimed an immunity under the Public Utility Holding Company Act of 1935 (49 Stat. 838; 15 U.S.C.A. Sec. 79) and under authority of an order of the Securities and Exchange Commission.

Respondents respectfully submit that the jurisdiction of this Court so invoked by this Petition for Writ of Certiorari should be refused in accordance with Rule 38 of the Rules of this Court.

ISSUE

An electric utility, a subsidiary of a registered holding company, filed with the Securities and Exchange Commission a plan under 11(e) of the Holding Company Act for the divestment of its interest in its non-utility subsidiary. After notice and hearing, in which the Petitioners for certiorari (stockholders of the non-utility) took part, the Commission found the Plan "necessary" under 11(b)(1), that the payments provided by the Plan to all persons interested, including specifically the stockholders of the non-utility, were "fair and equitable" and entered an Order approving the Plan. The Petitioners not seeking review under 24(a) or a stay under 24(b), the Plan was consummated in accordance with the Order of the Commission. Thereafter the Petitioners, without exercising the rights under the Maine Appraisal Statute reserved by the Plan, brought a bill in equity in a State Court against the electric utility, its non-utility subsidiary and the purchaser of the non-utility's assets seeking to set aside such consummation. This bill was dismissed by the State Court of last resort on the ground that the State Court could take no action inconsistent with the action taken by the Commis-

sion in the exercise of the exclusive jurisdiction given to it by the Holding Company Act.

Should this Court review on certiorari the decision of the State Court because (a) the State Court has decided a Federal question of substance not heretofore determined by this Court, or (b) because the decision of the State Court is probably not in accord with applicable decisions of this Court?

STATEMENT OF CASE

This case was instituted by bill in equity filed in the Maine Court by Petitioners, stockholders of Portland Railroad Company (hereinafter called the "Railroad Company") seeking to set aside, as illegal, unfair and fraudulent, action authorized by the stockholders of that company at a special meeting held December 28, 1944. (R. 62A-67A) At that meeting it was voted that the Railroad Company sell its physical assets to Central Maine Power Company (hereinafter called "Central Maine") and Portland Coach Company, cancel the Lease of its property, dated as of February 1, 1912, to Cumberland County Power & Light Company (hereinafter called "Cumberland"), under which Lease Central Maine was successor Lessee by merger, pay all of its debts, other than such of its bonds as were held by Central Maine which were to be surrendered, and a liquidating dividend of $110 per share to its stockholders, other than Central Maine, and thereafter dissolve. (R. 1503-1523, R. 458)

Central Maine, an electric utility, and the Railroad Company, owner of a bus system (its direct subsidiary), were both subsidiaries of New England Public Service Company, a "holding company" which was registered as such under the Public Utility Holding Company Act of 1935 (hereinafter called the "Holding Company Act" or the "Act"). (R. 261A, R. 250) All of the foregoing transactions so authorized by vote had been embodied in a Plan filed by

Central Maine under 11(e) of the Act with the Securities and Exchange Commission (hereinafter called the "Commission"). (R. 188A, R. 255) Such Plan was approved by Order of the Commission (R. 285A, R. 250) and found necessary to effectuate the provisions of 11(b)(1) and *"fair and equitable to the persons affected thereby"*. (R. 260A, R. 250)

In accordance with the Plan, no application was made to a Federal District Court for an enforcement order under 11(e) of the Act. Although they were granted the right to be heard and participated in the hearing before the Commission (R. 261A), Petitioners advised the Commission they did not wish to file a brief, sought no review under 24(a) of the Act, and therefore no stay under 24(b), made no attempt to exercise the right to an appraisal provided in the Plan, but elected to wait until the Plan had been consummated and then brought this proceeding in the Maine Court to set aside the entire transaction.

Under the Lease (R. 71A, R. 13), executed in 1912, for a term of ninety-nine years, the Lessee was to pay as rental such amounts as might be necessary to pay interest on the Railroad Company bonds and annual dividends of 5% on its stock. (R. 80A-87A) These payments were to be made to the Railroad Company, although, *at the option of the Lessee,* dividends could be paid directly to stockholders. (R. 83A) Dividends were guaranteed by Central Maine subject to their declaration by the Railroad Company and to the further provision that payment of that part of the rental represented by dividends to the Railroad Company, instead of the stockholders directly, satisfied the guaranty. (R. 89A)

The statement contained on Page 4 of the Petition that setting up reserves "for acquisition or refunding of outstanding bonds" constituted a recognition of a duty to stockholders of the Railroad Company to provide a purchaser for refunding bonds is obviously incorrect. If the

reserves were utilized to *acquire the bonds,* Central Maine under the terms of the Lease could offset future rental payments against the interest and principal of overdue bonds so acquired. (R. 105A-106A)

As of September 30, 1944 the balance sheet of the Railroad Company showed outstanding bonds of $3,645,000 against bondable property of only $1,560,704. (R. 515A, 516A) Of these outstanding bonds, $2,045,000 principal amount would become due November 1, 1945 and the balance on July 1, 1951. (R. 516A) The inability of the Railroad Company to meet either maturity was apparent, as well as the foreclosures of the trust mortgages and breach of the Lease by the Lessor, which would result from such defaults by it; also the likelihood that the Directors of the Railroad Company would no longer permit dividends to be paid its stockholders but retain that portion of the rental to meet imminent bond maturities.

The word "scheme" is used on page 5 and repeatedly in the Petition with the obvious innuendo that something tricky or underhanded was intended. Petitioners apparently ignore the fact that the Plan had to be submitted to the Commission and to all security owners of the Railroad Company and a public hearing held; further that after such submission and hearing the Plan was considered in detail by the Commission and found "necessary" and "fair and equitable". As the divestment of its interest in the Railroad Company required by 11(b)(1) would necessarily impose a large loss, Central Maine desired to effect such divestment and take such loss, which sooner or later was inevitable, during 1944 when its taxable income was large and the estimated effect of such loss upon its tax was substantial.

The Sitting Justice found no intentional fraud, and held the various transactions legal. (R. 501A) However, unlike the Commission, he assumed that there were no substantial legal complications to the payment of 5% dividends for the next sixty-six years, and ordered Central Maine to

pay Petitioners $119.25 per share, its actuarial value as computed by him. (R. 591A) His reasoning was that, although there was no intentional fraud, the price of $110 per share was unfair and oppressive, and he was therefore empowered to set aside the transactions embodied in the Plan. (R. 589A, 590A) Since he felt that to set aside the consummated transactions was impractical and might prove most inequitable (R. 591A), he ordered payment of $119.25 per share for the 730 shares owned by Petitioners and Intervenors (R. 2264) as a money substitute for the equitable relief he ruled he was empowered to accord. Practically all other publicly held shares had accepted the $110. (R. 590A)

Petitioners appealed to the Maine Supreme Judicial Court, sitting as the State's highest court. That Court upheld the ruling of the Sitting Justice as to the absence of fraud, and confirmed, expressly or by implication, all of his rulings on matters of State law, including those relating to interpretation of the Lease and guaranty, but held in the light of *Schwabacher* v. *United States*, 334 U. S. 182, 92 L. Ed. 1305 (1948) (decided after the Sitting Justice rendered his decision) (R. 2277):

> "• • • it was beyond the power of the state court to grant the relief which it did in this case. It could enter no decree which would be inconsistent with such action as was taken or might be taken by the Commission in the exercise of the exclusive jurisdiction given to it by the Holding Company Act."

It therefore not only dismissed the Petitioners' appeal but, as under Maine practice all questions presented by the Record were before it, dismissed the bill itself.

Additional facts are contained in the opinion of Justice Thaxter of the Maine Supreme Judicial Court, and reference is made to that opinion for a full and accurate statement of all material facts.

INTRODUCTION TO ARGUMENT

We are unable to improve upon the reasoning or selection of authorities in the opinion of Justice Thaxter, speaking

for the Supreme Judicial Court of Maine, sitting as the Court of last resort for that State. The extract above quoted aptly and succinctly states the question decided. The cogency of the reasoning by which the opinion supports that decision is self-evident. We shall, therefore, confine our brief primarily to the limited issue of whether a federal question of substance is presented.

The failure of the Maine appellate court to mention specifically the ruling of the Sitting Justice that the Petitioners did not have a guaranty separate and apart from the Lease is not ground for certiorari. The construction of the Lease and the guaranty, and the effect upon the guaranty of termination of the Lease, were matters of Maine law. Not only was the guaranty "subject to" the Lease, but the Sitting Justice ruled that termination of the Lease terminated the guaranty. We would assume the Maine Court's reason for not commenting upon this ruling was that it was so obviously correct comment was unnecessary.

The grounds urged in the Petition, (Sections 1 C and D p. 17, E p. 18, F p. 20, G p. 21) are not open on Petition for Certiorari.[1]

None of the contentions set out in the foregoing sections of the Petition were raised, litigated or passed upon by the Commission, the Sitting Justice, or the Maine Court on appeal. In *McCullough* v. *Kammerer Corporation,* 323 U. S. 327 (1945) this Court granted certiorari on a ground which was not properly raised, litigated or passed upon below. This was not apparent to this Court when certiorari was granted but became so when the case was argued. This Court dismissed the writ saying:

> "Thus the only question for which we granted certiorari is one not properly raised, litigated or passed

[1]Offer not a Plan, Petitioners deprived of judicial review, treatment of creditors not valid without Court review, authority of Commission to permit for present consideration termination of future obligation and cancellation of Lease by mutual consent.

upon below . . . (citing cases) The grounds asserted for the allowance of certiorari are inadequately supported by the record, and the writ is therefore dismissed."

It needs no citation of authorities that if a ground not properly raised, litigated or passed upon below cannot be considered by this Court in its appellate jurisdiction, such ground cannot be made the basis for bringing a case to this Court.

See also the cases cited in the McCullough case to the general effect that issues not properly raised, litigated or passed upon below cannot be considered by this Court.

THE MAINE COURT HAS NOT DECIDED A FEDERAL QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THIS COURT

A

The Federal Question decided by the Maine Court is not distinguishable from that decided by this Court in Schwabacher v. United States (334 U. S. 182, 1948).

On pages 14 and 15 of the Petition for Certiorari it is asserted that in at least three respects the Schwabacher case is distinguishable from that at bar.

(a) and (b). The end result sought to be accomplished by Section 5 of the Interstate Commerce Act was that existing railroad corporations should by merger be made larger and thereby a more effective and economical transportation system be provided. On the other hand, the end result sought to be accomplished by Section 11(b)(1) of the Holding Company Act was that the operation of each holding company system should be limited "to a single integrated public-utility system and to such other businesses as are reasonably incidental or economically necessary or appro-

priate to the operations of such integrated public-utility system." It is, therefore, not surprising that Section 5 of the Interstate Commerce Act should expressly exempt all mergers approved by that commission from all State or Federal anti-trust and anti-monopoly Statutes. Such an exemption would be clearly out of place in Section 11(b)(1) of the Holding Company Act.

As to the exclusive jurisdiction of each Commission over matters within its province, no valid distinction can be drawn between the two statutes. Section 21 of the Holding Company Act is explicit in providing that the jurisdiction of states and their officers and agencies shall continue only "*insofar as such jurisdiction does not conflict with any provision of this title or any rule, regulation or order thereunder.*"

The decree of the Sitting Justice was based on his ruling that a Maine Court in equity could enjoin the carrying out of a Plan approved by order of the Commission. Clearly the relief sought by the Petitioners and the jurisdiction so asserted by the Sitting Justice do *conflict* with the *provisions* of the Holding Company Act and the *order* of the Commission thereunder. As Justice Thaxter said, after considering the verbal differences between the two Acts, it is "apparent from the underlying purposes of both statutes that it was the intent that jurisdiction of the respective commissions within a certain ambit should be exclusive." (R. 2277) As this Court pointed out in the Schwabacher case and again in *Securities and Exchange Commission* v. *Central-Illinois Securities Corporation et al* (the Engineers case), decided June 27, 1949, 93 L. Ed. (adv. op.) 1291, the Interstate Commerce Act and the Holding Company Act are of "very similar purposes".

(c). Section 25 of the Holding Company Act clearly grants to state courts the power, concurrently with federal courts, to enforce liabilities or duties created by the Holding Company Act and to enjoin violations of that Act and rules, regulations or orders issued thereunder. As expressed

in that Section, the function of the state courts is to *assist in carrying into effect* the Holding Company Act and orders of the Commission. If the Petitioners' contention be correct, the function of State Courts is not to assist in carrying into effect orders of the Commission *but rather to nullify such orders* by setting aside consummated transactions carried out in exact compliance therewith.

In fact, the Holding Company Act confers broader powers upon the Securities and Exchange Commission to dispense with stockholder action than does the Interstate Commerce Act upon the Interstate Commerce Commission or Chapter X of the Bankruptcy Act upon District Courts of the United States.

The dissenting opinion of Justice Frankfurter in the Schwabacher case, concurred in by the Chief Justice and Justice Burton, affords no support to the contention of the Petitioners. It does not indicate that the Court of Michigan had or *could be given* by the Interstate Commerce Commission any power to enjoin the consummation of a merger it had approved. The reasoning of that opinion may approve the right of appraisal under the Maine statute provided by the Plan, which the Petitioners declined to utilize; but nowhere does it intimate that the Michigan court could enjoin consummation of the merger approved by the Interstate Commerce Commission or the Maine court enjoin consummation of a plan approved by the Securities and Exchange Commission.

Under Maine law a Sitting Justice in Equity could decree a money payment to the Petitioners if, and only if, he could enjoin the consummation of the Plan or, after its consummation, set aside all action pursuant thereto.

This is entirely clear not only from the opinion of Justice Thaxter but from the findings and opinion of Justice Sturgis, the Sitting Justice before whom the case was tried.

The cases, dealing with Maine corporations, upon which he relied, *MacArthur* v. *Port of Havana Docks Co.*, 247 Fed. 984 (D. C. Me. (1917)); *May* v. *Midwest Refining Co.*, 25 F.S. 560 (D. C., Me. (1938)) and *May* v. *Midwest Refining Co.*, 121 F. (2d) 431, C.C.A. 1 (1941) are clearly based on that principle of Equity procedure, which he adopted and followed. The opinion of Justice Thaxter repeatedly refers to the "relief sought" by the Petitioners —to set aside all corporate votes and action pursuant to the Plan—and the lack of power in the Maine court to grant such relief.

Justice Sturgis, having found that the value of the Petitioners' stock, as determined by the Commission, was so far below what he deemed fair as to be unfair and oppressive, *first ruled that he had the power to set aside and annul the consummated plan.* If he had not so ruled, he would have been forced to dismiss the bill. Having ruled he had that power, in his discretion he chose not to set aside the transactions but to decree a money payment as an alternative and substitute relief, stating:

> "A court of equity is not bound to set aside a voidable transaction in order to give proper relief to one who has suffered thereby when equitable relief may be worked out more efficiently by allowing the transaction to stand upon condition that equitable compensation be made. *Sabre* v. *United Traction & Electric Co.*, 156 Fed. 79, 83. See *May* v. *Midwest Refining Co.*, 121 Fed. 2d 431." (R. 591A)

The so-called Appraisal or Minority Stockholders Provisions of the Maine Statutes are Sections 80 to 91, inclusive, of Chap. 49, Revised Statutes of Maine, 1944, inserted in part in the Appendix. Save as to procedure, they differ only slightly from those of other States, and give minority stockholders no right to prevent or set aside a sale of corporate assets.

No one has ever suggested that there is any principle of Maine Equity procedure whereby an Equity Court may substitute itself for the machinery provided by the appraisal statute. The fundamental equitable principle that equity jurisdiction attaches only when there is no adequate legal remedy precludes any such result.

Justice Sturgis ruled adversely to the Petitioners on every question of law and fact except one, viz: that $110 a share was inadequate, and on that ground alone he based his decision that equity could interpose. He found inequitable that which the Commission had determined to be "fair and equitable". He substituted his judgment for that of the Commission on a matter which as this Court stated in the Engineers' case comes within that "area of expert discretion" which the Holding Company Act expressly entrusted to the Commission.

The issue in the Maine Courts was clear. They had power to grant neither (1) the relief sought by the Petitioners nor (2) that given by Justice Sturgis' decree, *unless they had power to enter a decree entirely inconsistent with the action taken by the Commission; viz, to enjoin or set aside that which the Commission had approved.*

B

The intent and effect of the phrase "or by other means", in the 11(g) report of the Commission does not give rise to a federal question of substance.

The Commission issued in accordance with its usual practice, two separate documents, viz.: an Order and a Findings and Opinion. The Order is the only document issued by the Commission compelling or permitting, as the case may be, action by any person or corporation subject to the Commission's jurisdiction. The Findings and Opinion are an integral part of the procedure under the Act because if such Findings are "supported by substantial evidence", they are controlling upon all Federal Courts.

The "Order Approving Plan" (R. 285A) is silent either as to right of appraisal or delegation to the State Court. In the "Findings and Opinion" of the Commission (R. 260A) is found this sentence:

> "In addition it may be noted that any stockholders dissenting from the proposed plan will have a right, pursuant to Maine statute, to have their stock appraised." (R. 278A)

Nowhere in the Findings and Opinion is there any reference to any other right of the stockholders to question the order of the Commission. The third document issued by the Commission, its Report pursuant to 11(g), contains the following:

> "Although this Commission has found the plan fair and equitable, whether or not any security holder should vote in favor of the plan or choose to exercise his rights under the appraisal statute *or by other means* should be determined by his independent judgment." (R. 259A) (Emphasis supplied)

The phrase "or by other means" contained in that sentence is the only ground upon which the Petitioners contend that the Commission had adopted any such unusual procedure as to delegate to the State Court the power to find that the Commission's valuation was so inadequate that the State Court might nullify the entire proceedings before the Commission.

We may, once and for all, comment upon the Petitioners' repeated contention that the Commission reserved to stockholders of the Railroad Company all "their rights under state laws". If the Commission reserved anything to the stockholders, it was, in the Commission's own language used in the Report, "to exercise his rights under the appraisal statute *or by other means*" (emphasis supplied). There is no intimation anywhere in the Report and none in the Order and Findings and Opinion which

could possibly be construed to intimate what "other means" the stockholders might exercise, or that they had any rights under Maine law other than to an appraisal.

It is clear that the State Court seriously doubted whether the Commission *intended to or did so delegate.* Note the language of Justice Thaxter (R. 2276):

> "How far did the Commission intend to go, how far did it go, and how far did it have the power to go in remitting minority stockholders to their remedies in the state court?"

Respondents respectfully submit that the Commission neither intended to or did make any such remission. We further submit, as bearing upon the relatively narrow issue raised by this Petition, that, leaving aside for the moment the power of the Commission, the answer to the questions of what it intended and whether such intent was effectively exercised must depend upon the phraseology used in the 11(g) Report *in this case.* If that be true, *it must follow that no federal question of substance is presented. There can be no reason to suppose that the same or equivalent phraseology has been or will be used in any other case.*

We respectfully contend that even if the Commission had power to permit the Petitioners to exercise any rights in addition to those under the appraisal statute, *such delegation of power was not accomplished by the insertion of these four words in the Report.*

The Report, as the Court well knows, is not subject to appeal or question. Neither the Central Maine nor the stockholders of the Railroad Company had any right to question whatever the Commission might see fit to insert in the Report. No Court had any authority to review it. It was merely advice which the Act obligated the Commission to give those from whom proxies were solicited.

No more do we believe it conceivable that the Commission, after consideration of a matter of this consequence, after preparation of a detailed Findings and Opinion, meant by

the insertion of this vague phrase in the Report to accomplish such an unusual result. In no respect do the Order or the Findings and Opinion lack clarity. There is no occasion to resort to another document in order to determine the intent of the Commission.

Nor can it be argued that the words in the Report are meaningless unless we ascribe to them the effect given by the Petitioners. Its purpose was to advise stockholders, many of them unfamiliar with corporate procedure and the Holding Company Act. One right which they certainly had and to which "or by other means" might well be intended to refer was to seek review under 24(a), another to petition the Commission for reconsideration of its decision.

The language of Judge Learned Hand in *Public Service Commission* v. *Securities and Exchange Commission,* 166 F. (2d) 784, 787, C.C.A. 2, (1948) cert. denied 334 U. S. 838, although dealing with the question of statutory construction, is illuminative:

> "Whether the Commission or the company begins is only a matter of procedure; the outcome will be precisely the same, for in either case the end sought is measured by subsection (b), an end whose realization the Act affirmatively prescribes. This once understood, it becomes to the highest degree unlikely that Congress should have set up a system of dual control over the fulfillment of this purpose; for it is scarcely necessary to expatiate upon the obvious defect of so organizing any official control; we have already declared ourselves on the matter in *Phillips* v. *Securities and Exchange Commission.* Indeed, in *First Iowa Hydro Electric Cooperative* v. *Federal Power Commission,* the Supreme Court carried this consideration in disregard of the text of a statute to much greater lengths than is necessary here. We start therefore with the premise that only the most explicit and unescapable language will suffice to bring about a result which so impedes, and is likely altogether to thwart, an expressly declared object of the Act."

If, as Judge Hand says, it is "to the highest degree unlikely that Congress should have set up a system of dual control", it is even more unlikely that the Commission to which he found control was committed should itself deliberately abdicate exclusive control and re-establish dual control. If it did intend so to do, such result "likely altogether to thwart, an expressly declared object of the Act" would be expressed in *"the most explicit and unescapable language."*

No administrative practice by the Commission to delegate power to State Courts to set aside transactions consummated pursuant to Commission order.

On page 16 of the Petition, it is contended that the Commission has heretofore exercised the power asserted by the Petitioners, viz.: to delegate to a state court power to set aside transactions which have been authorized by order of the Commission. In support of that contention the Petitioners cite a number of cases decided by the Commission, beginning with *In re Massachusetts Lighting Companies,* 3 S.E.C. 16, 17 (1938).

While some of the cases cited have authorized the value of securities to be determined by appraisal under a state statute and some by arbitration, in no one of them is there even an intimation that the Commission could empower a state court *to prohibit by injunction or otherwise in its entirety the consummation of a plan approved by the Commission.*

If the question here were whether the reservation by the Plan of the right of appraisal under the Maine statute was valid, the foregoing releases might be pertinent; they do not however support the much broader contention of these Petitioners.

The Court will note that the date of the latest Securities and Exchange Commission release referred to by Petitioners is 1944, that of the Commission's order in this case.

The Findings and Opinion of the Commission in the Kings County Lighting Company matter (Holding Company Act Release 7060, *dated December 14, 1946*) are pertinent in this connection. The Plan approved in that Release, amended as therein suggested, is that enforced in *Public Service Commission* v. *Securities and Exchange Commission, supra.* In the 11(e) plan first presented to the Commission in that matter was a provision that it be approved in accordance with the laws of New York by affirmative vote of two-thirds of the Common and two-thirds of the Preferred, each voting as a class, dissenters to have the right of appraisal. If the required approvals were not obtained, the Company reserved the right to ask the Commission to apply to a court under 11(e) for enforcement. The Commission said:

> "Thus, the failure to secure the required approval of the preferred stockholders would prevent the consummation of a plan which this Commission has found, if the suggested modifications are made, to be necessary to effectuate the provisions of Section 11(b) of the Act and fair and equitable. This would defeat the very purpose for which the Act was enacted. *Phillips* v. *S. E. C. et al.,* 153 F. (2d) 27 (1946), cert. den. 328 U. S. 860.
>
> "Even if the required vote is obtained, a shareholder who is not in favor of the proposed changes has the right, pursuant to the applicable New York law, to have the value of his stock appraised and to receive, in cash, the amount awarded. The aggregate amount of such demands cannot of course be estimated now. At any rate, it appears that two different standards of the equitable equivalent of the rights and interests of the stockholders would result—the first being the various participations found by us to be fair and equitable and the other being the cash appraisal value found to be proper by the appraisers. Further, if the holders of a large number of shares demand their appraisal rights, the cash funds which the company might be required to pay might be such as to impair its cash working capital and, thus, the feasibility of the amended plan.

> "In view of these circumstances, we shall not approve the amended plan unless the provision for a vote of shareholders is eliminated, enforcement of the plan in an appropriate court is requested, and the plan is to become effective and consummated pursuant to the order of said court."

We are informed that the precedent of the Kings County Lighting case has since been followed by the Commission, and it is now its settled practice not to approve plans containing a right of appraisal in accordance with state statutes. *At no time did the Commission authorize State Courts to enjoin the carrying out of plans it had approved; still less to set aside all action pursuant thereto.*

C

Whether any proposed method of divestment of a non-utility subsidiary constitutes a "Plan" under Section 11(e) is a matter within the expert judgment of the Commission, subject to review under Section 24(a).

Petitioners question whether the Plan approved by the Commission really was entitled to that designation. This question was not raised below. There is no statutory definition of what constitutes a "Plan". Here was a detailed proposal which provided a means of accomplishing a fundamental purpose of the Act. The Commission found it a "Plan" and that it was "necessary" and afforded "fair and equitable treatment to the persons affected".

We submit that under any sound principle of administrative law, it was the Commission's function to determine whether or not any method devised for accomplishing one of the objects of the Act constituted a "Plan". *In re North Continent Utilities Corporation,* 54 F.S. 527 D.C. Del. (1944).

The Petitioners claim that it was not a "Plan" under 11(e) because it contemplated the making of an "offer".

The plan approved in *Phillips* v. *Securities and Exchange Commission,* 153 F. (2d) 27, C.C.A. 2 (1946), cert. denied 328 U. S. 860 likewise embodied an offer. If for any reason the Plan in the case at bar were not carried out within the time prescribed, it in no way limited the power of the Commission subsequently to compel divestment under 11(b)(1) or thereafter to approve any new 11(e) plan for such divestment. It has been repeatedly held by the Commission and Federal courts that for the Commission to find a plan "necessary" under the Act it need not find that plan to be the only plan or the best plan.

D

Petitioners not deprived of judicial review.

Petitioners urge that as the Plan did not contemplate enforcement proceedings under 11(e), they have been deprived, by the decision of the Maine Court, of all right of judicial review. This question was not raised below. In *Phillips* v. *Securities and Exchange Commission, supra,* the Circuit Court of Appeals held that 11(e), relating to District Court enforcement of voluntary plans, was "very clearly permissive", that it would not interpret the Act so as to produce unneeded enforcement proceedings, and that stockholders' rights were adequately protected by their right to a review under 24(a).

This Court, in *American Power & Light Company* v. *Securities and Exchange Commission,* 325 U. S. 385 (1945), held that stockholders adversely affected by Commission orders relating to companies in which they own stock were persons aggrieved and entitled to a review under 24(a), though not technically parties. These Petitioners were clearly so entitled.

The cases on which they rely are not in point. *Blatchley* v. *Securities and Exchange Commission,* 157 F. (2d) 898, C.C.A. 1 (1946) and *Goldfine* v. *Securities and Exchange*

Commission, 157 F. (2d) 899, C.C.A. 1 (1946) were companion cases in which 24(a) petitions were dismissed on the authority of *Okin* v. *Securities and Exchange Commission,* 145 F. (2d) 206, C.C.A. 2 (1944) and *Lownsbury* v. *Securities and Exchange Commission,* 151 F. (2d) 217, C.C.A. 3 (1945). The order in the Blatchley and Goldfine cases appears in the opinion in another companion case, *Petition of Blatchley,* 157 F. (2d) 894, C.C.A. 1 (1946), and provided "that this order shall not become operative to authorize the consummation of the plan until an appropriate District Court shall have entered an order enforcing the plan."

The decisions in *Okin* v. *Securities and Exchange Commission,* and *Lownsbury* v. *Securities and Exchange Commission,* both *supra,* arose on orders similar to that in the Blatchley and Goldfine cases, and held that petitions to review such orders did not lie, on the familiar procedural ground that interlocutory orders are not subject to review. The case of *Okin* v. *Securities and Exchange Commission,* 143 F. (2d) 960, C.C.A. 2 (1944), on which Petitioners also rely, related to a purely procedural matter and the petition for review was dismissed on the same ground.

In the case at bar the Order of the Commission was not subject to any such condition, but was final and unconditional. Nothing remained to be done by either Commission or District Court.

Not only were Petitioners represented before the Commission, but the person who represented them, on his own behalf as a stockholder of the Railroad Company, filed a petition for review under 24(a). Subsequently that petition for review was dismissed on his own motion. (R. 4)

This Court in *Myers* v. *Bethlehem Shipbuilding Corporation,* 303 U. S. 41 (1938), dealing with provisions of the National Labor Relations Act providing for review of orders of the National Labor Relations Board which are

similar to those in Section 24(a) of the Holding Company Act, said:

> "Since the procedure before the Board is appropriate and the judicial review so provided is adequate, Congress had power to vest exclusive jurisdiction in the Board and the Circuit Court of Appeals."

E AND F

The approval by the Commission of the Plan for termination of the Lease and guaranty by mutual consent is in accord with the authority consistently exercised by the Commission under Section 11 and uniformly approved by the Federal Courts.

Petitioners' contentions to the contrary were not raised in the Maine Court.

By the Lease Central Maine could satisfy the guaranty by making payments direct to the Railroad Company. (R. 89A-90A) At its option it could pay direct to stockholders of the Railroad Company, (R. 83A) but, if it paid the Railroad Company, was under no further obligation to the stockholders. (R. 89A-90A) The Petitioners were thus not in any sense creditors of Central Maine, but stockholders of its subsidiary which was a creditor.

Even if a debtor-creditor relationship did exist, we fail to see how that raises any federal question of substance. The Phillips case *supra* holds a Commission approved plan may become final without issuance of a District Court enforcement order. As this Court said in *Otis & Co.* v. *Securities and Exchange Commission,* 323 U. S. 624 (1945) at p. 638:

> "Where pre-existing *contract provisions* exist which produce results at variance with the legislative policy which was not foreseeable at the time the contract was made, they cannot be permitted to operate."

In both *New York Trust Company, et als.* v. *Securities and Exchange Commission,* 131 F. (2d) 274, C.C.A. 2

(1942) and *Massachusetts Mutual Life Insurance Company* v. *Securities and Exchange Commission,* 151 F. (2d) 424, C.C.A. 8 (1945), the authority of the Commission under Section 11 to approve the retirement of bonds without payment of premium has been upheld. In the first case, no request was made to a District Court for an enforcement order. It was even held *In re Standard Gas & Electric Co.,* 151 F. (2d) 326, C.C.A. 3 (1945) that the jurisdiction of the Commission includes the power to approve a distribution in kind to debenture holders. In each case certiorari was denied by this Court.

The Court in *In re Standard Gas & Electric Co., supra,* held the principles announced by this Court in the Otis & Co. case were applicable to Section 11 proceedings, whether the plan dealt with treatment of stockholders or creditors, saying:

> "Consequently a general grant of power to reorganize which has been held applicable to one group of security holders, as here, by the Otis decision, must be held applicable to the other. If Congress had meant otherwise, the distinction between debenture holder and shareholder could all too easily have been made. The fact that Congress neither drew the line of demarcation nor even discussed it in the hearings or reports indicates how little weight a separatist argument can be given now."

In each case contract provisions are not permitted to produce results at variance with the Act and the issue is the "equitable equivalent" of the securities to be surrendered.

The Commission has repeatedly held that an interest in a bus transportation business is not retainable under the standards of 11(b)(1). If Central Maine was to continue for sixty-six years as lessee of the Railroad Company's buses it would necessarily continue to have an interest in the transportation business. Assume Central Maine should divest itself of all securities of the Railroad Company; the objectives of 11(b)(1) would in no way be

accomplished if it still continued as lessee of the Railroad Company's property. It would still be in the bus transportation business, a business not reasonably incidental to the operation of a public utility system.

The only way for Central Maine to divest itself of its interest in this transportation system was to secure a cancellation of the Lease. Certainly no solvent corporation would have accepted an assignment of it. Notwithstanding the suggestion of Petitioners' counsel, the Commission of its own motion under 11(b)(1) could have ordered cancellation of the Lease upon fair and equitable terms. Sooner or later such action had to be taken. The order of the Commission approving this Plan for termination by mutual consent is as effective and entitled to as much weight as an order of the Commission entered on its own initiative.

G

Lease not rejected but terminated by mutual consent pursuant to Maine Law

Under G. (p. 21 of the Petition) the contention is made that the Commission could not authorize Central Maine to "reject" the Lease. This Lease was not rejected by unilateral act of Central Maine. It was terminated by *mutual consent* pursuant to stockholders' vote at a meeting held legal by both the Sitting Justice and the Maine Court on appeal. Thus the Lease and all rights thereunder were terminated in accordance with Maine law and no federal question is presented.

THE DECISION OF THE MAINE COURT IS IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT

A

The decision of the Maine Court is in accord, not only with that of this Court in the Schwabacher case, but also

with prior decisions of this and other Federal courts upholding the supremacy of the commerce power and the exclusive control vested in the Commission by the Holding Company Act. *American Power & Light Co.* v. *Securities and Exchange Commission,* 329 U. S. 90 (1946); *North American Co.* v. *Securities and Exchange Commission,* 327 U. S. 686 (1946); *Phillips* v. *Securities and Exchange Commission,* supra; *Public Service Commission, et al.* v. *Securities and Exchange Commission,* supra. It is also in accord with decisions of this Court holding that state courts have no jurisdiction to entertain suits which constitute collateral attacks on orders of federal administrative bodies. *Bowles* v. *Willingham,* 321 U. S. 503 (1944); *Venner* v. *Michigan Central R.R.,* 271 U. S. 127 (1926). See also *Seaboard Air Line Railroad Company* v. *Daniel,* 333 U. S. 118 (1948).

The distinction between the decision of the Maine Court in the case at bar and that of this Court in *Callaway* v. *Benton,* 93 L. Ed. (adv. op.) 443 decided February 7, 1949 is plain. In the Callaway case, which arose under Section 77 of the Bankruptcy Act, the lessor was offered the opportunity of selling its property to the Lessee or of having the lessee disaffirm the lease. Since the lessor was *not subject to the jurisdiction of the bankruptcy court,* whether or no the lessor should sell its railroad was, as this Court held, a matter for determination by its stockholders under state law.

In the case at bar both Lessor and Lessee were subsidiaries of a registered holding company and *both* subject to the jurisdiction of the Commission. Moreover, as pointed out in the Callaway case, that decision in no way derogated from recent decisions, including the Schwabacher case, which had upheld the power of the Interstate Commerce Commission to over-ride state laws. The basis of the decision was that Section 77 of the Bankruptcy Act did not give the right, to Commission or Court, to require accept-

ance *by a Lessor not in reorganization* of an offer for the purchase of its property.

B

No more is the decision of the Maine Court in conflict with the decision of this Court in *Central New England R. Co.* v. *Boston & A. R. Co.*, 279 U. S. 415 (1929). The Plaintiff railroad had leased trackage rights to the Defendant. The Defendant procured an order from the Interstate Commerce Commission authorizing it to discontinue service over its connecting line. It was a typical petition for discontinuance; the Commission in no way passed, or attempted to pass, upon the question of what compensation, if any, the Plaintiff should thereafter receive. The Plaintiff prevailed in an action at law to collect rent. This Court, after declining to hear the counsel for the Plaintiff (respondents in this Court) held that, whether or no the Interstate Commerce Commission had power to relieve a carrier of its contractual obligations with respect to the abandoned trackage rights, it did not purport to exercise such power, and affirmed the verdict for the Plaintiff.

In our case the Commission *did determine* the compensation which should be awarded for discontinuance of the rental payments. It capitalized the rent payable over the remainder of the Lease and made a very slight deduction therefrom because of certain legal difficulties, which, in its judgment might stand in the way of future dividends. The Petitioners thus were afforded the "equitable equivalent" of their rights, as found by the Commission. In the case relied on by Petitioners there was no decision in the discontinuance proceedings as to the future liabilities, if any, of the lessee; but the lessee contended that the mere fact, that by order of the Interstate Commerce Commission, it was freed from the obligation to serve the public on a connecting line, freed it from all future liability to pay rent under a valid and existing agreement.

C

Petitioners suggest that the decision of the Maine Court is not in accord with the Schwabacher case because in that case the proceeding was remanded to the Interstate Commerce Commission, while in the instant case Petitioners' bill in equity was dismissed by the Maine Court on the ground that it could not grant the relief sought. We cannot believe that Petitioners' counsel seriously feel that distinction is valid. The Schwabacher case went on direct appeal from an order of the Interstate Commerce Commission to a special three-judge Federal Court, and from that Court directly to this Court. The proceedings in the Schwabacher case were taken strictly in accordance with the statutory method of review provided by the Interstate Commerce Act, and this Court having reached its decision had the power to remand.

In the instant case no review was sought by Petitioners under the direct method provided by the Holding Company Act. Instead, Petitioners instituted proceedings in the Maine Court to set aside transactions embodied in a plan approved by the Commission. In essence the Petitioners' proceeding is a collateral attack on the order of the Commission. The Courts of Maine have no control over the Commission. Any order issued by the Maine Court remanding this matter to the Commission would be a mere nullity.

The assertion on page 26 of the Petition that "there can be no certainty that in arriving at its conclusion the Commission took into account the rights of the security holders under State law" is contradicted many times by the language of the Findings. The Commission considered at length the possible differing constructions of the Lease and their affect upon the rights of the Lessee and the stockholders of the Lessor, and the consequences which might ensue when on November 1, 1945 the Second Mortgage Bonds and on July 1, 1951 the First Mortgage Bonds

became due. After considering the financial situation of the Lessor, and the possible "ambiguities" under the Lease, the Commission found the plan a "compromise" between the different constructions "adverse to Central Maine" and therefore favorable to the Petitioners, and specifically found "the settlement proposed by the Plan to be fair and equitable to the persons affected thereby". (R. 273A) The Court in *In Re North American Light & Power Co.*, 170 F. (2d) 924 C.C.A. 3 (1948) held that it was within the Commission's authority to approve the settlement of corporate claims without considering the merits of individual claims provided it used reasonable judgment in determining the expediency of the entire settlement.

REASONS PECULIAR TO THE CASE AT BAR WHY THIS COURT SHOULD NOT EXERCISE ITS DISCRETION IN BEHALF OF THE PETITIONERS.

We note that the reasons in Rule 38, par. 5, do not fully measure or control the Court's discretion, and that the writ "will be granted only where there are special and important reasons therefor". In the case at bar, we submit, there are no such reasons; on the contrary there are reasons *peculiar to this case against granting the writ.*

These Petitioners were represented at the hearing before the Commission by a trained security analyst, who stated (R. 1033) that Petitioners felt the price of $110 per share inadequate; and (R. 1034) "We (the Petitioners) make no objection so far as treatment of the bonds is concerned. We do make objection in regard to the treatment of the stock."

(1) Although the Trial Examiner of the Commission suggested that the Petitioners file a brief they declined so to do. (2) After the Order of the Commission was issued, they did not petition for review under 24(a). (3) Although they voted in the negative at the stockholders' meeting, they did not follow up such vote by requesting an appraisal

under the Maine statute, which right was expressly reserved to them by the Plan. These three apt remedies they ignored.

The attitude of the Petitioners is summarized in Justice Thaxter's opinion. (R. 2264):

> "What these stockholders apparently want as we gather it from their bill is not reimbursement, not to be made whole under any of the provisions of law either state or federal, but rather by appealing to the broad equity powers of the state court to assume control over these corporations, and particularly to enforce the provisions of the lease of Railroad Co. exactly in accordance with its terms. They take pains to disclaim any purpose to avail themselves of their statutory rights."

Surely the Petitioners, whose motives are thus so aptly characterized and who have neglected the ample opportunities afforded them by both Act and Plan to procure a review or reversal of the Commission's adjudication of the value of their stock, the only issue they raised before the Commission, are wandering far afield when they petition a busy court to exercise its discretion in their behalf.

CONCLUSION

In conclusion, we wish briefly to comment on the absurd results which would follow if the contention of these Petitioners was sustained. This Court has now made clear in the Engineers' case that the scope of review of an order of the Commission is the same whether considered by a District Court under 11(e) and thereafter on appeal to a Circuit Court of Appeals, or whether submitted directly to a Circuit Court of Appeals under 24(a). In each instance either Court, and even this Court, is bound by the findings of the Commission as to value, if based on sound legal principles and supported by substantial evidence.

The contention of the Petitioners amounts to this, viz.: that (1) a single justice of a State Court, whose findings of

fact in turn are not subject to correction by the State Court of last resort if similarly supported, can be empowered to exercise a power as to a plan approved by the Commission which, *under applicable decisions of this Court, cannot be exercised by any Federal Court;* (2) a single Justice of a State Court can examine, de novo, into "equitable equivalents", matters which this Court has held to be within the "area of expert discretion" of the Commission; and (3) if he disagrees with the Commission, he can nullify all it had decided. If these contentions were sound, the Commission could not effectively administer and carry out the objectives of the Act. Hopeless confusion between state and federal courts would result.

Assume, after a plan had been approved by the Commission, stockholder A files a petition to review under 24(a) in a Federal Court of Appeals, stockholder B a bill in equity seeking to enjoin or set aside in a State Court. The Federal Court approves the Plan. The State Court enjoins its consummation. Which view prevails? Is the result different if the petition to the Federal Court comes before or after the bringing of the bill in equity? Is the result different if the decision of the Federal Court of Appeals is announced before or after the decision of the State Court? The mere possibility of any such chaotic condition illustrates the wisdom of the framers of the Constitution in providing that in all matters within the federal power as to which Congress has acted, the federal and not the state authority shall control. That being so, the decision of the Maine Court must be correct and in its own language (R. 2277):

> "It could enter no decree which would be inconsistent with such action as was taken or might be taken by the Commission in the exercise of the exclusive jurisdiction given to it by the Holding Company Act."

Respondents, Central Maine Power Company, Cumberland County Power & Light Company and Portland Railroad Company submit that:

1. The Maine Supreme Court has not decided a Federal question of substance not theretofore determined by this Court;

2. The decision of the Maine Supreme Court is in accord with applicable decisions of this Court; and

3. There are special reasons *peculiar to this case* why *these Petitioners* are not entitled to have this Court exercise its discretion in their favor.

WHEREFORE, the undersigned Respondents pray this Honorable Court that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
(49 Stat. 838; 15 USCA 79)

"SEC. 11 (b). It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system:

* * * * * * * *

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

* * * * * * * *

SEC. 11 (e). In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find

such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

* * * * * * * *

SEC. 11 (g). It shall be unlawful for any person to solicit or permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, consent, authorization, power of attorney, deposit, or dissent in respect of any reorganization plan of a registered holding company or any subsidiary company thereof under this section, or otherwise, or in respect of any plan under this section for the divestment of control, securities, or other assets, or for the dissolution of any registered holding company or any subsidiary company thereof, unless—

* * * * * * * *

(2) each such solicitation is accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission;

SEC. 21. Nothing in this title shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934 over any person, security, or contract, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this title affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person, security, or contract, insofar as such jurisdiction does not conflict with any provision of this title or any rule, regulation, or order thereunder.

SEC. 24 (a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evi-

dence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

SEC. 25. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240

of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347), and section 7, as amended, of the Act entitled 'An Act to establish a court of appeals for the District of Columbia', approved February 9, 1893 (D. C. Code, title 18, sec. 26). No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court".

MAINE APPRAISAL STATUTE

Chap. 49, Revised Statutes of Maine, 1944, Sections 80-91

RIGHTS OF MINORITY STOCKHOLDERS

SEC. 80. *Corporation not to sell franchises or entire property without consent of stockholders. R.S. c.* 56, § 63. 1931, *c.* 225, § 5. 1937, *c.* 195.

I. No corporation shall sell, lease, consolidate, or in any manner part with its franchises, or its entire property, or any of its property, corporate rights, or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease, or consolidation. All such sales, leases, and consolidations, except as in this section hereinafter otherwise provided, shall be subject to the provisions of this and the 11 following sections, and to the prior lien of stockholders as therein defined. Except as to franchises, this and the 11 following sections shall not be held to apply to mortgages of corporate property.

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SEC. 81. *Remedy of dissenting stockholder. R.S. c.* 56, § 64. If any stockholder in any corporation which shall vote to sell, lease, consolidate, or in any manner part with its franchises, or its entire property, or any of its property, corporate rights, or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, shall vote in the negative and shall file his

written dissent therefrom with the president, clerk, or treasurer of such corporation within 1 month from the day of such vote, the corporation in which he is a stockholder may, within 1 month after such dissent is so filed, enter a petition with the supreme judicial court, or the superior court, sitting in equity, in the county where it held its last annual meeting, in term time or in vacation, setting forth in substance the material facts of the transaction, the action of the corporation thereon, the names and residences of all dissenting stockholders whose dissents were so filed, making such dissenting stockholders parties thereto, and praying that the value of the shares of such dissenting stockholders may be determined and for other appropriate relief.

SEC. 82. *If corporation fails to enter petition, dissenting stockholder may enter and prosecute the same. R.S. c.* 56, § 65. If any such corporation shall fail to enter such petition as aforesaid, any stockholder dissenting as aforesaid may within 1 month thereafter enter such petition and prosecute the same, making such corporation party defendant. In either case the court shall fix the time of hearing and shall order notice thereof to all parties interested, by publication in some newspaper or newspapers at least 2 weeks successively and such personal service as is required upon bills in equity.

SEC. 83. *Court to determine value of shares and secure rights of stockholders; corporation to deposit amount of award in some bank; shares to become property of corporation. R.S. c.* 56, § 66. The court, or any justice thereof, in term time or in vacation, shall hear the parties and determine as soon as practicable the value of the stock of such dissenting stockholders; and shall make and enforce all such orders and decrees as may be necessary to secure to such stockholders all their rights. Such corporation shall, notwithstanding any appeal as hereinafter authorized, forthwith deposit the amount so awarded in some bank or trust company designated by the court, to be by it held until final judgment and paid to the parties as thereafterwards

ordered by the court directing such deposit. Upon such deposit and upon compliance with final judgment as hereinafter provided, the shares of such stockholders shall become the property of such corporation, and the court may make and enforce such orders as may be necessary to secure its title thereto.

SEC. 84. *Either party may enter appeal, and trial had before a jury; award, how paid; appellant to have lien on property of corporation. R.S. c.* 56, § 67. Within 30 days after filing the decree determining such values as aforesaid, either party may enter an appeal therefrom, to be heard at the next term of the superior court in the county where such petition is pending. The issue may thereupon, at the request of any party thereto, be submitted to a jury. If upon such trial the amount of such award is increased, the stockholder shall have judgment and execution against the petitioning corporation or corporation defending, for such increase with interest and costs; and if decreased, such corporation may withdraw from said deposit the amount of the decrease with interest and costs. During the pendency of such appeal, the appellant shall have a lien upon all the property of the corporation interested in such sale or lease or consolidation for 30 days after judgment on appeal. Such lien shall have precedence over any mortgages or leases made after any vote of sale, lease, or consolidation. All such liens may be released upon filing with the court a bond in such amount and with such sureties as the court may approve. Two or more stockholders may join in the same appeal.

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SEC. 87. *If corporation fails to pay amount decreed, rights of stockholders; lien of dissenting stockholder. R.S. c.* 56, § 70. If none of the corporations interested in such petition shall pay or deposit the amount as herein ascertained and decreed, with interest thereon, within such time as the court shall order, any stockholder, entitled to such amount, may at his option take judgment and execution therefor, with in-

terest and costs, against such corporation or withdraw his stock aforesaid; and after such withdrawal or if said execution is returned unsatisfied within 30 days after judgment, the owner of such shares shall retain all the rights of a dissenting stockholder as though no proceedings had taken place. All stockholders entitled to a remedy hereunder shall have a lien upon the property of the corporations in which they are stockholders which shall take precedence of all mortgages or leases of any kind made after any vote of sale, lease, or consolidation. Such liens may be released as provided in section 84.

SEC. 88. *Court may hear and determine petitions, and make orders for enforcement of rights of all parties. R.S. c.* 56, § 71. The supreme judicial court, or the superior court, or any justice thereof may in term time or vacation hear and determine said petitions and make all orders for giving notice to non-resident parties, and taking action with reference to them, for the enforcement of the rights of any party to the proceedings, for the consolidation of two or more petitions, for the payment of interest on the adjudged value of the shares, for the payment of dividends, pending the proceedings, for interest upon the deposit aforesaid, for the distribution of costs between the parties, and for enforcing its orders and decrees, as are consistent with the principles of equity practice, and as the convenient and speedy settlement of the controversy may require.

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